IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1243 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KALU ISMAIL

Appearance:

1. Civil Revision Application No. 1243 of 1999

MR MA BUKHARI AGP for Petitioner No. 1-4

MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 17/04/2002

ORAL JUDGEMENT

Heard Mr. Bukhari, learned AGP for the

petitioner State and Mr. Hathi, learned advocate for the respondent. During the hearing, I was taken through the order under challenged passed by the learned Assistant Judge, Rajkot dated 11.8.1998 in Civil Misc. Application No. 2 of 1997, wherein the learned Assistant Judge, Rajkot has rejected the condonation application filed by the petitioner State, which was preferred after more than two years. It is the case of the petitioner that the respondent original plaintiff has filed Civil Suit being Regular Civil Suit No. 645 of 1986 before the Civil Judge (SD), Rajkot for pensionary benefits. The learned trial Judge has after considering the case put forward by the parties and after considering the submission made before him has decreed the suit in favour of respondent plaintiff and the petitioner-defendant were directed to pay pensionary benefits. Being aggrieved by the said judgement of the learned trial Judge, the petitioner State had preferred appeal in the year 1997 alongwith Civil Misc. Application no. 2/1997 under Section 5 of the Limitation Act for condonation of delay in filing the appeal for two years and 2 days. The said application is supported with the affidavit of A.M. Aashra, Assistant Govt. Pleader Rajkot dated 17.1.1997

2. The challenge in this Civil Revision Application is in respect of the order passed by the learned Assistant Judge, Rajkot in Misc. Civil Application filed by the petitioner-defendant challenging the judgement and decree passed by the learned trial Judge and the said appeal was filed beyond the period of limitation and accordingly, application for condoning delay was submitted by highlighting the ground that no opportunity was given to the defendant and the trial Court has proceeded with the suit ex-parte and the decree passed by the learned trial Judge deserves to be set aside. It is the contention of applicant in the said application that no opportunity was given to the defendant to lead evidence or to produce documents and accordingly, the decree passed by the trial Court has resulted into miscarriage of justice and further on merits that the plaintiff is not entitled for any pension as he was working as work-charge employee. The appellate Court has while considering the said application has held that the appeal is filed after a very long period of 2 years and 2 days and as there is no satisfactory explanation for delay is highlighted and no case is made out for condoning delay and accordingly, application was rejected. Mr. Bukhari has while arguing the matter has taken me through the order and submitted that the Appellate Court ought to have examined the contentions on merits as a decree was passed against the defendant

ex-parte and accordingly, treating the appeal time barred is not proper and legal and prayed that opportunity be given to the applicant-defendant by directing the appellate Court to examine the case on merits. Mr. Hathi, learned advocate for the respondent has also taken me through the affidavit-in-reply filed by the respondent original plaintiff and it is his contention that the original plaintiff has worked with the department by rendering services for more than 30 years continuously and on superannuation on 30th November, 1985, the plaintiff was treated as work-charge employee and accordingly, the plaintiff has challenged the action by filing suit by not granting any pensionary benefits before the learned trial Judge and accordingly, he submitted that there was no justification for delay on the part of the defendant-State and the appellate Court has rightly rejected the application by treating the application as time barred. The Regular Civil Suit No. 645/86 was decreed by the learned trial Judge on 16th December, 1994 as per the decree, the defendants were directed to fix pay and pension amount by granting 6 months time. It is further found from the reply affidavit that the Executive Engineer, R & B Div. City Division, Rajkot sent the papers for fixation of pension to the Director of Pension and Provident Fund on 9.4.1996 and on 1.7.1996 the Superintendent Engineer, Rajkot sent the papers to the Secretary, R&B at Gandhinagar for necessary approval and orders and it is thereafter, the appeal challenging the order passed by the learned trial Judge was moved at the instance of petitioner defendant on 17.1.1997, where the delay was occurred for more than 2 years and 2 days.

3. As found from the order passed by the learned Assistant Judge that no sufficient cause is shown for delay and the petitioner has not explained the delay and accordingly, application for delay in filing appeal was rejected. Mr. Bukhari, while arguing the matter has vehemently urged that the learned trial Judge was not right in rejecting the application for delay as according to him that after the judgement and decree was passed by the lower court, for taking matter further, they have to obtain orders from the authority and while taking such steps, delay has occurred and in normal course, when Government is litigating party, it is not possible for the Government to present appeal in time and further the appellate court has also committed error by accepting the case of the petitioner. It is his submission that by allowing this revision application, the necessary direction be given to the Appellate Court to examine the appeal on merits by granting time so that the grievance

of the petitioner State may be reflected before the Appellate Authority.

4. Mr. Hathi for the respondent has while arguing the matter has placed reliance in cases of LALA BAL MUKAND (DEAD) BY L.Rs. VS. LAJWANTI AND OTHERS, reported in AIR 1975 SC 1089 and MAHINDRA LAND AND BUILDING CORPORATION LTD. VS. BHUTNATH BANERJEE AND OTHERS, reported in AIR 1964 SC 1336, wherein, in terms it is laiddown by the Hon'ble Supreme Court that the High Court is not required to entertain of its revisional jurisdiction under Section 115 of CPC and more particularly, the fact that though the plaintiff has to be in 30 years in service and on superannuation he was entitled for pension and learned trial Judge has rightly decreed the suit by granting pension.

5. Considering the submissions and order under challenge, wherein, learned Appellate Court has in term held that no sufficient ground is shown and no proper explanation is rendered for condoning the delay much less then and no affidavit is filed by the person from the department from where the delay is occurred. In my view this is not a matter wherein this court is required to entertain the revision application while exercising my revisional jurisdiction under Section 115 of the CPC. Hence there is no substance in this Revision Application. Revision Application is accordingly rejected. Rule is discharged.

(D.K.Trivedi,J.)
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